

CITY COUNCIL OF THE CITY OF ANNAPOLIS

ORDINANCE NO. O-12-05Amended

Introduced by Mayor Moyer

LEGISLATIVE HISTORY

First Reader:	Public Hearing:	Fiscal Impact Note:	120 Day Rule:
2/14/05	3/23/05	3/14/05	

Referred to:	Meeting Date:	Action Taken:
Economic Matters	5/19/05	Favorable w/amendments
Finance Comm	3/17/05	Favorable

AN ORDINANCE concerning

Lease of MarketHouse

FOR the purpose of authorizing the lease of the MarketHouse to Dean & DeLuca Annapolis, Inc., a body corporate, for a certain period of time, subject to certain terms, provisions, and conditions, for the purpose of operating a full scale gourmet market and café; and all matters relating to said lease.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the proposed MarketHouse Lease Agreement between the City of Annapolis and Dean & DeLuca Annapolis, Inc., a copy of which is attached hereto and made a part hereof, for a period of twenty years, is hereby approved and the Mayor is authorized to execute the Lease Agreement on behalf of the City of Annapolis. In accordance with Article III, Section 8 of the Charter of the City of Annapolis, the City Council expressly finds that the leasing of the MarketHouse to Dean & DeLuca Annapolis, Inc., will better serve the public need for which the property was acquired.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect from the date of its passage.

ADOPTED this 25th day of May, 2005.

ATTEST:

THE ANNAPOLIS CITY COUNCIL

Deborah Heinbuch, MMC
City Clerk

BY: _____
ELLEN O. MOYER, MAYOR

EXPLANATION:

Redlining indicates matter added to existing law.

~~Strike Out indicates matter deleted from existing~~
~~law.~~

Underlining indicates amendments.

MARKETHOUSE MASTER LEASE

THIS AGREEMENT OF LEASE, made this ____ day of _____, 2005, by and between the Mayor and Aldermen of the City of Annapolis, a municipal corporation, hereinafter called "City", and Dean & DeLuca Annapolis, Inc. hereinafter called "Tenant."

WHEREAS, this Lease is executed consistent with the policies established in City Code, Section 7.28.020;

WHEREAS, Tenant desires to lease the designated space(s) under the terms and conditions hereinafter set forth;

WHEREAS, Tenant hereby acknowledges that this Lease is the product of arms length negotiations in which Tenant was represented by private legal counsel of Tenant's choosing, and that this Lease is Tenant's free and voluntary act; and

WHEREAS, pursuant to Ordinance O-12-05 the Annapolis City Council has authorized this Lease and has determined that this Lease will better serve the public need for which the referenced premises were acquired.

WHEREAS, City Code Section 7.28.020 and the Request for Proposals issued on June 22, 2004 and the subsequent addendum issued July 7, 2004, in reference to the Market House lease (hereinafter "RFP") are hereby incorporated by reference and are set forth as the public policy of the City concerning operation of the Market House; and

WHEREAS, whenever the consent of the City is sought or exercised under this lease, it shall be understood and agreed that consent is reasonably denied or conditioned when the City determines it necessary or appropriate in order to implement a provision of the RFP or applicable law, including but without limitation, City Code Section 7.28.020."

NOW, THEREFORE, in consideration of the foregoing recitals, mutual promises, covenants, conditions and agreements contained herein and of the rents and payments hereinafter reserved, City hereby leases to Tenant, and Tenant leases from City, all that space in the Annapolis MarketHouse, described as follows:

1. Premises: The entirety of the building and improvements known as the Annapolis MarketHouse "and that area on the exterior of the MarketHouse, including sidewalk area not to exceed the roof line as shown by the dashed lines in Exhibit 1 (attached hereto)", having a common address of _____, Annapolis, Maryland 21401 (hereinafter referred to as the "Premises").

2. Term: The term of this Lease shall be for a period of twenty (20) years, commencing on the date that the City delivers vacant and exclusive possession of the Premises to Tenant (hereinafter "Commencement Date"). City shall designate the anticipated Possession Date in a notice (hereinafter "Possession Date Notice") given by City to Tenant, which designated

1 anticipated Possession Date shall not be less than thirty (30) days from the date of such
2 Possession Date Notice, nor more than one hundred twenty (120) days therefrom. The City may
3 permit Tenant access to the Premises prior to the Possession Date so that Tenant may begin to
4 commence certain of its improvements to the Premises during the period of time that the City is
5 performing the City's Work (as defined in paragraph 7.A. below) in order to permit more timely
6 and orderly completion of all of the improvements to the Premises. In such event, the parties
7 agree to cooperate with each other in the construction of such improvements.
8

9 3. Management of Lease: Pursuant to City Code, Section 2.46.020.A (1986 Code, Supp.
10 12), the Annapolis Central Services Officer ("C.S.O.") or his/her successor, (in each case in
11 which this Lease refers to the Central Service Officer, that term shall be read to include any
12 person designated by the Central Services Officer or by the Mayor of Annapolis to perform the
13 act referred to), shall manage the MarketHouse property and to that end, administer this Lease
14 according to its terms.
15

16 4. Use of Premises: Tenant shall use and occupy the Premises for a full scale gourmet
17 market ~~and café~~ for the retail and wholesale sale of gourmet grocery items and prepared foods,
18 which, for purposes of this Lease shall include any or all of the following: (a) the sale of
19 products, foods, flowers, merchandise, services and items generally sold in supermarkets,
20 grocery stores and other stores operated by Tenant, Dean & DeLuca, Inc., or its affiliates,
21 including, without limitation, candy, coffee, nuts, produce, meat, poultry, seafood, dairy, cereals,
22 grains, fruits and vegetables, frozen foods, charcuterie, grocery replacement meals, sushi,
23 vitamins, body care products, cosmetics, health care items, house wares, books, magazines,
24 medicinal herbs, homeopathic remedies, nutritional supplements, and any other product, food,
25 service, or item sold in other supermarkets or grocery stores operated by Dean & DeLuca, Inc. or
26 by any of its affiliates, and including the home delivery of any of the foregoing; (b) on-premises
27 cooking and on-premises consumption of food and beverages; (c) the operation of an in-store
28 delicatessen; (d) ~~a catering business~~ delivery of prepared foods and the operation of a juice bar
29 and/or coffee and espresso bar for the on-premises and/or off-premises consumption of food and
30 beverages; (e) the sale of gift items; and (f) any other similar, related, or incidental use. Tenant
31 shall not, however, be permitted to sell alcoholic beverages from the Premises. Tenant
32 covenants that the leasing and occupancy of said Premises is for the sole purpose of carrying on
33 the business, as designated hereinbefore, directly and solely for the benefit of Tenant, and agrees
34 not to use said premises for any other purpose whatsoever, without the prior written consent of
35 City, which consent shall not be unreasonably withheld, conditioned or delayed.
36

37 A. Tenant shall at all times limit the placement and location of its merchandize, fixtures,
38 improvements, advertisements and other goods and property to the confines of the Premises;
39 provided, however, that Tenant may utilized the sidewalk areas immediately adjacent to the
40 Premises for the display of items for sale provided Tenant's use thereof does not interfere with
41 the flow of pedestrian traffic and is maintained in a first class manner and that Tenant, at its cost,
42 shall comply with all relevant state, municipal or local laws, rules, regulations, or ordinances

(including the requirements of any historic preservation codes) with respect to such use of the sidewalk areas, and obtain all necessary permits or licenses for the same.

B. Tenant shall use commercially reasonable efforts to coordinate the scheduling and acceptance of deliveries of merchandise by 12:00 noon 11 a.m. and so as not to interfere with traffic and/or parking in the MarketHouse area. ~~Tenant anticipates that its initial hours of operation within the Premises shall be from 7:00 a.m. to 8:00 p.m. Monday through Saturday, and 9:00 a.m. to 6:00 p.m. on Sunday.~~ The Premises shall be open from 8:00 a.m. to 7 p.m. seven days a week excluding holidays. Notwithstanding the foregoing, Tenant reserves the right, in its sole discretion, to ~~modify~~ increase its hours of operation from time-to-time.

~~C. Additionally, notwithstanding any other provision of this Lease to the contrary, Tenant shall have the option of ceasing operations within the Premises, provided that it continues to pay the monthly installments of Base Rent. In the event Tenant ceases operations within the Premises, it shall provide City written notice thereof within 30 days after it ceases its operations.~~

5. Rent: The use of the term "Rent" hereinafter in this Lease shall be construed to include any and all Base Rent, Percentage Rent, Additional Rent and other charges due by Tenant to the City under the terms of this Lease.

A. Base Rent. From and after the Rent Commencement Date (as defined herein), Tenant agrees to pay to the City, as Base Rent, the amount of \$100,000 per year ("Base Rent"), payable in equal monthly installments of \$8,333.33 per month, due and payable on the first day of each month, beginning on the Rent Commencement Date (as defined herein) and continuing thereafter each and every month thereafter during the term of this Lease; provided further, however, that the Base Rent shall be increased at the beginning of each Lease Year (as defined herein), pursuant to sub-paragraph E. below. As used herein, the term "Rent Commencement Date" shall mean the later of (1) the date that Tenant receives a full and unconditional certificate of occupancy for the Premises, or (2) the date that Tenant opens for business in the Premises, but no later than 120 days from issuance of occupancy permit. As used herein, the term "Lease Year" shall mean each consecutive 12-month period, commencing on first day of July.

B. Percentage Rent. Tenant agrees to pay to the City, as Percentage Rent, an amount equal to 3.33% of Tenant's Gross Sales in excess of the applicable annual Breakpoint. As used herein, the term "Breakpoint" shall be equal to the Base Rent for the particular Lease Year divided by 3.33% (i.e., for the first Lease Year, the Breakpoint shall be equal to \$3,003,003.00, and if Tenant has Gross sales of \$3,103,003, the applicable Percentage Rent would be \$3,333.00).

(1) Within 120 days following the end of each Lease Year, Tenant shall provide City with a written statement ("Percentage Rent Statement"), certified by an officer of

1 Tenant, setting forth the total Gross Sales for such Lease Year, and the amount, if
2 any, of the Percentage Rent owed for such Lease Year. City covenants and agrees
3 to keep and maintain such Percentage Rent Statement confidential in all respects,
4 and agrees not to disclose such Percentage Rent Statement or the contents thereof
5 to any person or entity without first obtaining the prior written consent of Tenant.
6

- 7 (2) In the event the Percentage Rent Statement shows that Percentage Rent is owed
8 for such Lease Year, Tenant shall pay such amount to City within 120 days
9 following the end of each Lease Year.
10

11 C. *Definition of Gross Sales.* As used herein, the term "Gross Sales" shall mean be the total
12 retail sales of merchandise or services made by Tenant or any occupant of the Premises, whether
13 cash or credit and shall include all sales from any part of the Premises; provided, however,
14 Tenant may deduct from Gross Sales (a) sales taxes, based upon present or future laws, collected
15 directly from customers by Tenant, and any other tax, excise or duty which is levied or assessed
16 against Tenant by any governmental authority based on sales of specific merchandise sold on, or
17 the privilege or license to sell or distribute specific merchandise from the Premises, whether or
18 not the amount thereof is passed on to or collected by Tenant from any purchaser thereof; (b)
19 sales of Tenant's trade fixtures; (c) returns to shippers and manufacturers; (d) any sales the
20 proceeds of which are subsequently repaid to the purchaser, including, without limitation, returns
21 by customers; (e) the discounted portion of sales made to Tenant's employees; (f) all trade or
22 discount coupons; (g) any interest, credit card service charges, bank charges for counterfeit
23 currency or unnegotiable checks; (h) insurance proceeds; (i) charitable contributions; (j) direct
24 expenses of credit card sales that are paid by Tenant to the issuers of such credit cards; (k) sales
25 originating from the internet or catalog sales; and (l) transfers by Tenant from the Premises to
26 another place of business owned or operated by Tenant or an affiliate of Tenant (where such
27 transfers are made solely for the convenient operation of Tenant's business and not for the
28 purpose of consummating a sale which has therefore been made in or on from the Premises or for
29 the purpose of depriving City of the benefit sale which otherwise would be made in or on from
30 the Premises).
31

32 D. Tenant shall pay each month, in advance on the first day of each month, to the City of
33 Annapolis Director of Finance or other authorized agent, the applicable monthly installment of
34 Base Rent, Percentage Rent (if any), Additional Rent and all other charges then payable by
35 Tenant under this Lease. The Base Rent for any partial month shall be prorated based on the
36 number of days in such month.
37

38 E. The Base Rent shall be increased at the beginning of each Lease Year after the first Lease
39 Year, based on the changes in the Consumer Price Index for Urban Consumers (1982-84=100) as
40 published by the United States Department of Labor, Bureau of Labor & Statistics (sometimes
41 referred to as Consumer Price Index - U or CPI-U). In the event the publication of the CPI-U is
42 discontinued, the parties hereto agree to substitute comparable statistics of the cost of living in

the United States, as they shall be computed and published by an agency of the United States government. The increase in the Base Rent shall be calculated as follows:

(1) The index number listed for month in which the Rent Commencement Date occurs shall be the "Base Index Number." The corresponding index number for the month immediately preceding the beginning of the applicable Lease Year shall be the "Current Index Number". The Current Index Number shall be divided by the Base Index Number, and the resulting quotient shall be multiplied by the initial Base Rent. The resulting product shall be the Base Rent for the particular Lease Year.

6. Security Deposit: Concurrent with the execution of this Lease, Tenant shall deposit with City the sum of \$16,666.67 as security for the full and faithful performance of this Lease by Tenant. Provided Tenant is not then in breach of any material term of this Lease, the City shall return to Tenant said deposit, less any amounts rightfully withheld by the City for monies due to it under the terms of this Lease within sixty (60) days after the termination or expiration of this Lease.

7. Improvements to Premises:

A. *City's Improvements*. City shall perform, at City's sole cost and expense, the work as described on Exhibit ___ attached hereto and made a part hereof (such work being collectively referred to herein as "City's Work") and needs to include all of the infrastructure improvements and improvements to the basic building structure (roof, walls, foundation) and building systems (HVAC, electrical and plumbing), as well as installation of utility meters. City shall perform City's Work in accordance with all applicable laws, codes rules, regulations and ordinances. City shall perform City's Work in a good and workmanlike manner. City shall perform City's Work prior to the Commencement Date, such that, on the Commencement Date, City's Work shall be Substantially Complete. City shall have the right to enter the Premises subsequent to the Commencement Date to complete "punch list" items of City's Work. City and Tenant shall cooperate in good faith in connection with the scheduling and sequencing of Tenant's performance of its initial alterations to the Premises with City's performance of any "punch list" items of City's Work. City shall use commercially reasonable efforts to complete any "punch list" items of City's Work as soon as is reasonably practicable following the date of Substantial Completion of the applicable item of the City's Work. Within thirty (30) days following the Commencement Date, City and Tenant shall each execute and deliver to the other a letter agreement setting forth the actual Commencement Date. As used herein, the term "Substantially Complete" shall mean that the applicable work has been substantially completed in accordance with the applicable plans and specifications, if any, it being agreed that such work shall be deemed substantially complete notwithstanding the fact that minor or insubstantial details of construction or demolition, mechanical adjustment or decorative items remain to be performed.

B. Tenant's Improvements.

(1) Initial Improvements. Tenant shall, at its sole cost and expense, install the initial improvements (other than City's Work) to the Premises necessary to prepare the Premises for Tenant's occupancy and the operation of Tenant's business therein. The plans and specifications for Tenant's initial improvements are attached hereto as Exhibit ____, and City hereby approves of such initial improvements in all respects.

(2) Signage. All of Tenant's signage shall comply with all local codes, rules, regulations and ordinances, including historical preservation codes and planning and zoning codes. City shall cooperate with Tenant and facilitate Tenant's securing of all necessary approvals for Tenant's signs, including the necessary approvals from the Historic Preservation Commission.

(3) Subsequent Improvements. Following the initial improvements, Tenant shall not make any additional improvements to the Premises without City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tenant shall not be required to obtain City's prior written consent for any improvements which have hard costs of less than \$100,000. In connection with seeking City's approval for any improvements or alterations of the Premises, Tenant shall provide City with detailed plans and specifications therefore for City's review and approval. Such approval will not be unreasonably withheld, conditioned or delayed by the City.

(4) Installation of all services and equipment shall be at Tenant's expense and only by contractors previously approved in writing by the City. The City shall not disapprove any project by a licensed contractor who has all necessary City permits. All installations shall conform with all applicable laws, rules, regulations and ordinances.

8. Utilities: City, at its sole cost and expense and as part of City's Work, shall stub in all utilities and plumbing to locations identified by Tenant, and City shall install all necessary electrical, water, natural gas, and other meters necessary to meter utility consumption by Tenant at the Premises. Except as otherwise provided herein, Tenant shall be solely responsible for and promptly pay all charges for heat, water, gas, electricity or any other utility used or consumed in, on, or about the Premises. In no event shall City be liable for an interruption or failure in the supply of any such utilities to the Premises unless caused by City.

9. Surrender of Premises at End of Term: At the expiration or termination of the tenancy hereby created, Tenant shall surrender the Premises in reasonably good order and condition, reasonable wear and tear excepted, and shall surrender all keys for the Premises to City at the place then fixed for the payment of rent. Tenant shall remove all its trade fixtures before surrendering the Premises as aforesaid, and shall repair any damage to the Premises caused thereby. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease and Tenant's surrender of the Premises.

10. Default:

A. Tenant Default. Tenant shall be in default of this Lease if:

(1) Tenant shall at any time fail to pay rent, or any other payment to City required hereunder, within ten (10) days following the date the same is due, provided, in the event Tenant fails to timely make any payments hereunder, City shall give written notice specifying such delinquency, and Tenant shall have ten (10) days following its receipt of such notice to cure such delinquency; or

(2) Tenant shall fail to keep, perform, or observe any other covenant, agreement, condition, or undertaking hereunder, and shall fail to remedy such default within thirty (30) days (or such longer period of time as is necessary to cure the default, provided that Tenant promptly commenced its cure and diligently pursued such cure during the 30 day period, provided, that in no event shall such cure period continue for more than an additional 90 days) after written notice thereof has been received by Tenant.

In the event the Tenant is in default of its obligations under this Lease, the City may re-enter upon the Premises without further form or process of law, by force or otherwise, without being liable to any prosecution or damages therefore and without other notice or previous demand, and such re-entry shall constitute a termination of Tenant's right to occupy the Premises pursuant to this Lease. No such recovering possession of the Premises shall deprive the City of any other action or claim against the Tenant for possession, for Rent or for damages, including but not limited to a claim for Rent through the end of the term of this Lease subject only to Tenant's right to a credit, if any, Tenant may have for rent actually received by the City from any substitute tenant occupying Premises or any part thereof. City covenants and agrees to take all commercially reasonable steps to mitigate its damages hereunder. City shall not, however, have the right to accelerate any Rent due under the Lease.

B. City Default. City shall be in default of this Lease if, at any time, City shall fail to keep, perform, or observe any other covenant, agreement, condition, or undertaking hereunder, and

1 shall fail to remedy such default within thirty (30) days (or such longer period of time as is
2 necessary to cure the default, provided that City promptly commenced its cure and diligently
3 pursued such cure during the 30 day period, provided, that in no event shall such cure period
4 continue for more than an additional 90 days) after written notice thereof has been received by
5 City. In the event of a City default, Tenant shall have the right, but not the obligation, to cure
6 such City default and offset against any Rent payable under this Lease the amount expended by
7 Tenant in connection with such cure. Additionally, Tenant shall have the right to abatement of
8 its Rent hereunder for the period of time that City is in default of its obligations hereunder and, if
9 such period of default continues for a period of 90 days, Tenant shall have the right terminate
10 this Lease and/or pursue an action for damages against City.
11

12 C. Attorneys fees: In the event of default hereunder by one party, the non-defaulting party
13 shall have the right to recover it's reasonably attorney's fees and costs of enforcement of the
14 Lease from the defaulting party.
15

16 11. Real Estate Taxes: Landlord shall be solely responsible for, and shall promptly pay, any
17 and all Real Estate Taxes related to the Premises. "Real Estate Taxes" shall mean: (i) all ad
18 valorem taxes (adjusted after protest or litigation, if any) for any part of the term of this Lease;
19 (ii) any taxes which shall be levied in lieu of any such ad valorem taxes, including any taxes
20 which may be levied on any rent derived from the Premises or any use or other similar tax
21 related to the use of the Premises; (iii) any special assessments for benefits on or to the Premises
22 and all improvements thereon or related thereto; (iv) taxes on personal property owned by
23 Landlord located on or used in connection with the Premises; and (v) any other tax, assessment
24 or imposition applicable to the Premises or any portion thereof.
25

26 12. Assignment, Sublease and Mortgage: Neither the Premises nor any portion thereof shall
27 be sublet by Tenant without the prior written consent of City, which consent shall not be
28 unreasonably withheld, conditioned or delayed. Neither this Lease, nor any interest herein may
29 be hypothecated or mortgaged by Tenant, and any attempted hypothecation or mortgaging of this
30 Lease shall be of no force or effect, and shall confer no rights upon any mortgagee or pledgee.
31

32 Tenant will not assign this Lease or any part thereof without the prior written consent of
33 the City which consent shall not unreasonably be withheld, conditioned or delayed.
34 Notwithstanding the foregoing, Tenant shall have the right to assign this Lease without City's
35 consent to any entity which owns, is owned by, or is under common ownership with Tenant, or
36 to any entity which acquires all or substantially all of Tenant's assets.
37

38 In the event that Tenant shall become bankrupt or insolvent, or should a receiver be
39 appointed to administer Tenant's business or affairs, neither this Lease nor any interest here shall
40 become an asset of such receiver, and in the event of the appointment of any such receiver, this
41 Lease shall immediately terminate and end.
42

13. Damage to Premises: If, during the term of this Lease, the Premises(s) shall be damaged by fire, or other casualty, not the fault of the Tenant, its officers, or its employees, then the Rent and other charges payable by Tenant herein shall be abated pending the complete restoration of said Premises, in proportion to the extent to which the same shall be rendered untenable. It shall be the responsibility of the City to restore such Premises within a reasonable time, but only to the condition the same was/were in at the time possession thereof was originally delivered to Tenant, ordinary wear and tear excepted; and it shall be the responsibility of the Tenant to restore its own fixtures and equipment within a reasonable period of time thereafter. The City shall have no liability to Tenant for personal injury or property damage in whole or in part, by escaped pollutants. Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease in the event that (1) the time for the completion of the complete restoration of the Premises following any such damage or destruction exceeds 120 days, or (2) if such damage or destruction occurs in the last 2 years of the term of this Lease.

14. Compliance With Laws: It shall be the duty of Tenant to maintain all of Tenant's installations and equipment, as well as any improvements or additions as may be constructed by the Tenant at the Premises at the commencement of the lease term, in accordance with all applicable laws, rules, ordinances and regulations. City shall maintain the exterior walls, entrances, roof and the structural components of the Premises in accordance with all applicable laws, rules, ordinances and regulations.

15. Abandoned Improvements: All alterations, improvements and additions made at Premises by Tenant at its expense which are abandoned and left remaining at the Premises at the expiration or any termination of the Lease shall, at the option of City, become the property of the City.

16. City Right to Enter: City shall have the right, upon reasonable advance notice to Tenant, to inspect the Premises and to enter thereon for the purposes of making all necessary repairs or maintenance and to determine whether Tenant is in compliance with the terms of this Lease.

17. Unlawful Practices by Tenant: Tenant shall take all commercially reasonable steps to prevent any person employed by Tenant from violating any Federal, State or Municipal law or regulation regarding adulteration, misbranding, short-weighting, short-changing or similar practices in the sale of any merchandise from the Premises. In the event that any employee of the Tenant is convicted of any of the foregoing, Tenant shall cause the termination of such employee's employment with Tenant and, within 60 days following such conviction, Tenant shall present City with plan outlining the steps taken by Tenant to prevent such activity from occurring in the future.

18. City Rules, Regulations and Ordinances: Tenant agrees to abide by all rules, regulations and ordinances which are of general applicability and not directed specifically at the Premises

1 and to the extent they do not conflict with the express terms of this Lease. ~~The City shall not~~
2 ~~establish any rules, regulations and/or ordinances which are directed specifically and/or solely to~~
3 ~~the Premises.~~
4

5 19. Insurance and Indemnification:
6

7 A. Indemnification by Tenant. Tenant shall, at its sole expense, fully indemnify, defend and
8 hold harmless the City, and in their capacity as such, the officers, agents and employees thereof,
9 from and against any and all claims, suits, actions, liability and judgments for damages or
10 otherwise for actual or alleged injury to persons or property, including loss of use of property
11 whether or not such property is physically damaged or destroyed, in any way arising out of or
12 through or alleged to arise out of or through the acts or omissions of Tenant or its officers,
13 agents, employees, or contractors or to which acts or omissions Tenant or its officers, agents,
14 employees or contractors acts or omissions in any way materially contributed provided said
15 claim, suit, action, liability or judgment shall in any manner be connected to:
16

17 (1) Tenant's use or occupancy of the Premises; or
18

19 (2) Tenant's failure to comply with the provisions of any statute, regulation or
20 ordinance of the United States, State of Maryland, County of Anne Arundel, City
21 of Annapolis applicable to Tenant in its business at the Premises(s) or in its
22 performance of any part of this Lease.
23

24 B. *Indemnification by City.* City hereby agrees to indemnify, defend, and hold Tenant, its
25 shareholders, members, officers, directors, employees and agents harmless from and against any
26 and all claims, suits, actions, liability and judgments for damages or otherwise for actual or
27 alleged injury to persons or property, including loss of use of property whether or not such
28 property is physically damaged or destroyed, in any way arising out of or through or alleged to
29 arise out of or through the acts or omissions of City or its officers, agents, employees, or
30 contractors or to which acts or omissions City or its officers, agents, employees or contractors
31 acts or omissions in any way materially contributed.
32

33 C. Nothing herein shall be deemed to prevent the parties indemnified and held harmless
34 herein from participating in the defense of any litigation by their own counsel at the
35 indemnifying party's sole expense. Such participation shall not under any circumstances relieve
36 the indemnifying party from its duty of defense against liability or of paying any judgment
37 entered against such party.
38

1 D. As a part of the indemnification provided by subparagraph A. above, but without limiting
2 the foregoing, Tenant shall file with the City concurrent with the execution of this Agreement,
3 and at all times thereafter maintain in full force and effect at Tenant's sole expense, an acceptable
4 policy or policies of liability insurance, including comprehensive general liability insurance. The
5 policy or policies shall name as primary or additional insured the City, and in their capacity as
6 such, the officers, agents and employees thereof. Said policy of insurance shall be in the
7 minimum single limit amount of one million dollars (\$1,000,000.00) per occurrence. The
8 insurance policy shall insure against the types of liabilities covered by the indemnification and
9 hold harmless provisions above.

10
11 E. The insurer or insurers of the policy or policies referred to in the preceding paragraph
12 shall be authorized to write the required insurance, approved by the Insurance Commissioner of
13 the State of Maryland.

14
15 F. The certificate of insurance for such policies shall be maintained by Tenant in full force
16 and effect during the entire term of this Lease and any renewal thereof. Each policy of insurance
17 shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the
18 policy, whether for nonpayment of premium, or otherwise, and whether at the request of Tenant
19 or for any other reason, except after thirty (30) calendar days advance written notice mailed by
20 the insurer to the C.S.O. and that such notice shall be transmitted postage prepaid, with return
21 receipt requested.

22
23 20. Maintenance; Security.
24

25 A. *Tenant's Maintenance Obligations.* Except for those maintenance obligations of City set
26 forth in subparagraph B below, Tenant shall be responsible to provide for the daily care,
27 maintenance and cleanliness of the Premises, the adjacent public rights-of-way and the plaza at
28 the western end of the Premises (including the removal of snow on the sidewalk areas adjacent to
29 the Premises), as well as the maintenance and repair of the interior of the Premises, and the City
30 shall have no duty or obligation regarding same.

31
32 B. *City's Maintenance Obligations.* City shall, at its sole cost and expense, be solely
33 responsible for the maintenance, repair and replacement of all of the structural components of the
34 Premises, including, without limitation, the roof, foundation, installations existing below and
35 within the foundation, exterior walls, interior load bearing walls, all entrances, windows and
36 doors to the Premises. Additionally, City shall, at its sole cost and expense, maintain, repair and
37 replace the HVAC system serving the Premises. The City shall also be solely responsible for the
38 repair and replacement of any sidewalk and/or plaza areas adjacent to the Premises, as well as
39 the maintenance and replacement of any landscaping located thereon.
40

C. City shall not be obligated to insure the Tenant or Tenant's property or Tenant's officers, employees or customers against criminal activities of third parties. City and in their capacity as such, the officers, employees and agents of City, shall have no liability for physical harm or property damage resulting directly or indirectly from its efforts to protect Tenant against any criminal activity.

21. Water and Sewer: The City shall install, at its sole cost and expense, a water meter for the Premises. Tenant shall pay for all water consumed in the Premises and for sewer service at the City's standard rates therefore, without any surcharge mark-up thereto.

22. Resolution of Certain Disputes: With respect to any disputes between the parties hereto concerning the giving or denial of any consent required under this Lease, or with respect to the compliance with any of the terms of this Lease (other than with respect to the payment of Base Rent), the parties covenant and agree to attempt, in good faith, to resolve any such dispute prior to commencing any litigation or declaring any default with respect thereto. The parties shall devote a period of 10 days following written notice of such dispute in which to resolve the dispute. In connection therewith, the City hereby designates its Central Services Officer and the Tenant hereby designates its Vice President – Finance (or other comparable officer in the event that no such officer has been appointed) to participate in any such dispute resolution. In the event that such dispute resolution does resolve the dispute between the parties, the parties hereto specifically reserve to themselves all other rights, remedies and procedures available to them at common law or by Federal, State or local law including but not limited to all rights, remedies and procedures under Maryland Real Property Article.

23. Refuse Removal: Tenant shall contract for refuse removal services with a private company to remove Tenant's refuse. The parties hereby agree that the City shall have no obligation to provide refuse removal services to Tenant.

24. Notices: All written notice(s) required hereunder shall be delivered by regular mail, postage prepaid as follows:

A. To Tenant, at:

Dean & DeLuca Annapolis, Inc.
Attn: President
560 Broadway, Suite 404
New York, New York 10012

With a copy to: Dean & DeLuca, Inc.
Attn: Chief Financial Officer
2526 E. 36th Street North Circle
Wichita, Kansas 67219

B. To City at: Central Services Officer
c/o 160 Duke of Gloucester Street
Annapolis, Maryland 21401

and

City Attorney
City of Annapolis Office of Law
93 Main Street, 2nd Floor
Annapolis, Maryland 21401

25. Joint and Several Liability: If there is more than one Tenant to this Agreement, the term "Tenant" as used herein shall apply to each and to all jointly and severally, and the liability of all Tenants hereunder shall be joint and several.

26. Miscellaneous: Where under the terms of the Lease, Tenant is required to submit a request or proposal of any type to the City, the City shall initiate a response to that request within ten days of its receipt provided Tenant's request is in writing. This Lease shall constitute the entire agreement between the parties hereto. This Lease and any documents incorporated by reference herein shall be governed by the laws of the State of Maryland. This Lease supersedes any and all other Leases, agreements (written or verbal) or terms of tenancy between the parties for the Premises. Each party acknowledges that he has read and fully understands each provision of this Lease and that no changes shall be made to this Lease unless in writing and signed by all parties. Tenant hereby acknowledges that it was represented by competent, legal counsel of his choosing in the negotiation of this Lease. The terms of this Lease shall bind the parties, their successors, assigns, representatives and heirs according to its terms.

WITNESS:

DEAN & DELUCA ANNAPOLIS, INC.

BY: _____
Print Name: _____
Title: _____

ATTEST:

THE MAYOR AND ALDERMEN OF
THE CITY OF ANNAPOLIS

1
2
3
4 _____ BY: _____
5 Deborah Heinbuch, MMC, City Clerk Ellen O. Moyer, Mayor
6

7 Approved as to Form and Legal Sufficiency:
8
9

10 _____
11 Shaèm C. Spencer, City Attorney Date
12
13